IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1182 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHKUMAR J BAGADANIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1182 of 1988

MS KJ BRAHMBHATT for MS VASUBEN P SHAH for Petr.

MR HL JANI,AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 10/02/2004

ORAL JUDGEMENT

1. The petitioner in this petition under Article 226 of the Constitution of India has prayed for appropriate writ, order or directions directing the respondent no.3

Manager, Government Printing Press, Bhavnagar to withdraw and quash and set aside orders at Annexures A,C and F and further directing him to protect his pay scale for the post of Lino Operator.

2. The petitioner joined services as Packer on 3.6.1968 in Government Printing Press at Bhavnagar. The petitioner was promoted to the post of Lino Operator on officiating basis with effect from 1.2.1972. The petitioner was confirmed on the post of Lino Operator with effect from 1.3.1980. The respondent no.3, by memo dated 15.9.1987, informed the petitioner that one Lino machine of the Lino Department was not properly working since long and the procedure for disposing of the said machine was on hand; the petitioner being the junior-most and the post of Lino Operator being sanctioned with the Lino Machine and the same being condemned, the post of Lino Operator was liable to be cancelled. The petitioner was, therefore, asked as to whether he was ready to work on the existing post of Mono Operator subject to the condition that his seniority on the post of Mono Operator would be from the date of appointment and his pay on the post of Mono Operator will be fixed on the basis of the pay scale of Mono Operator. The petitioner was again asked on 10.11.1987 and 5.12.1987 to give his written reply to the memo dated 15.9.1987. The petitioner was informed by notice dated 5.12.1987 that as he had not given written reply to the offer of appointment as Mono Operator, procedure for compensation pension under Rules 290 and 291 of the Bombay civil Services Rules was required to be undertaken. The petitioner was informed that within three months from the date of receipt of the said notice, he would be put on pension. It appears that the petitioner, by his representation dated 13.1.1988, requested for maintaining his seniority and his pay scale on the post of Mono Operator. On 25.2.1988, the respondent no.3 informed the petitioner that in lieu of Lino Machine being condemned, the post of Lino Operator sanctioned along with Sadi Machine having been abolished, the petitioner was liable to be relieved from service, but he would be offered alternative post of Mono Operator/ Lino Operator/ Lino Bar Attendant in any Government Press if he was ready to go there subject to his seniority on the post of Lino Operator/ Mono Operator being last and subject to the revised pay fixation on the concerned post. The petitioner has challenged the memo dated 15.9.1987 at Annexure A, notice dated 5.12.1987 at Annexure C and Memo dated 25.2.1988 at Annexure F to the present petition.

3. In compliance with the order dated 21.4.1988

passed by this Court while issuing Rule, affidavit-in-reply is filed by Mr. K.T.Memon, Dy. Director (Admn.), Government Printing and Stationary Department.

4. Heard Ms.K.J.Brahmbhatt appearing for Ms.Vasuben Shah for the petitioner and learned AGP Mr. H.L.Jani.

5. From the affidavit-in- reply, it appears that the petitioner was appointed as Lino Operator with effect from 1.2.1977 on the Mechanical Composing Machine namely Lino Machine at Government Press, Bhavnagar. This Lino Machine has outlived its utility period and has become unrepairable; as such it was not functioning properly and, therefore, the machine had been condemned. At present, the Lino Machines are not manufactured indigenously and the foreign manufacturers have discontinued manufacturing of such machines due to adoption of new technology and the old Lino Machines cannot be repaired. In the circumstances, the petitioner has no work and he has been sitting idle since long and he has been paid pay and allowances for the last 7 to 10 years by the Government. In the aforesaid circumstances, the petitioner was offered alternative appointment as Mono Operator as provided by Rule 266 of the BCSR 1979. The pay scale of Lino Operator was Rs. 1350- 2200 while the pay scale of Mono Operator was Rs.1200 -2040. Thus, the petitioner is posted on the lower post. However, as stated in the affidavit- in- reply, his total emoluments will be protected which he was drawing as on the day of the affidavit. In view of these specific averments in the affidavit in reply, I am of the view that the petitioner is not entitled to make any grievance as the impugned orders are not detrimental to the interest of the petitioner. The respondent no.2 being the Competent Authority to condemn the machine, the Lino Machine of Government Press, Bhavnagar was condemned on 7.2.1987. Since new Lino Machines are not available, it was not possible for the respondents to replace Lino Machine. In such circumstances, the respondents were justified in not continuing the post of Lino Operator in Government Press. In this view of the matter, the respondents are justified in invoking Rule 266 of the BCSR which reads as under:

> "If a Government servant is selected for discharge owing to the abolition of his permanent post or owing to a change in the nature of duties of that post, he shall, unless he is appointed to another post, the conditions of which are deemed by the authority competent to discharge him, to be at least equal to those of his own, have the option:

(a) of taking any compensation pension or gratuity to which he may be entitled for the service he has already rendered, or

(b) of accepting another appointment or transfer to another establishment even on a lower pay, if offered, and continuing to count his previous service for pension".

6. Considering the fact that by invoking the said provisions, it is made clear by the respondents that if the petitioner accepts alternative appointment offered, his pay and services shall be protected and counted for the purpose of pension and other benefits and his services shall be protected in accordance with Rule 41(a) and 43- Instruction II of BCSR, I am of the opinion that the petitioner has no grievance whatsoever to make in this petition. The so-called grievances in the petition are nothing but mere imagination and without any basis. Once it is accepted that the action of the respondents is bonafide and the petitioner is not victimised, nothing further is required to be done in the matter. I, therefore, hardly see any ground in this petition which requires any consideration.

7. There being no substance in this petition, it is is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

(Kshitij R.Vyas,J.)

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